



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 14-1598

November 4, 2014

**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU SEEKS COMMENT ON
PETITIONS CONCERNING THE COMMISSION'S RULE ON OPT-OUT NOTICES ON FAX
ADVERTISEMENTS**

CG Docket No. 02-278

CG Docket No. 05-338

Comment Date: November 18, 2014

Reply Comment Date: November 25, 2014

Two petitions have been filed seeking a declaratory ruling and/or waiver concerning section 64.1200(a)(4)(iv) of the Commission's rules, which requires fax ads sent to a consumer who has provided prior express invitation or permission to include an opt-out notice.¹ With this Public Notice, we seek comment on the Petitions to the extent described below.

The Petitioners contend that section 64.1200(a)(4)(iv) does not apply to faxes sent with the "prior express invitation or permission" of the recipient because the Commission lacks authority to regulate "solicited" faxes, and they seek a declaratory ruling to that effect.² The Petitioners also allege that confusion was created regarding the applicability of the rule by language contained in a footnote to the Commission's 2006 order adopting the rule.³ In addition, the Petitioners argue that regulation of solicited faxes raises First Amendment concerns.⁴ Alternatively, the Petitioners request that the Commission clarify that the opt-out notice requirements imposed on solicited faxes were not promulgated under section 227(b) of the Communications Act, as amended.⁵

¹ See *Petition of Allscripts-Misy Healthcare Solutions, Inc. for Declaratory Ruling and/or Waiver*, CG Docket Nos. 02-278, 05-338 (filed Sept. 30, 2014) (Allscripts Petition); *Petition of Francotyp-Postalia, Inc. for Declaratory Ruling and/or Waiver*, CG Docket Nos. 02-278, 05-338 (filed Oct. 14, 2014) (FP Petition) (collectively Petitioners); see also 47 C.F.R. § 64.1200 (a)(4)(iv).

² See Allscripts Petition at 5-7; FP Petition at 5-6.

³ See Allscripts Petition at 6; FP Petition at 4.

⁴ See Allscripts Petition at 8; FP Petition at 6.

⁵ See Allscripts Petition at 9; FP Petition at 6-7.

Subsequent to the filing of these Petitions, the Commission released an order denying substantially similar requests for declaratory ruling made by several other parties. As a result, we find it unnecessary to seek additional comment on the Petitioners' requests for declaratory ruling.⁶

Alternatively, the Petitioners seek a retroactive waiver of the opt-out notice requirement for fax ads sent where prior express invitation or permission has been obtained from the recipient.⁷ In the recent *Fax Order*, the Commission granted retroactive waivers of this requirement to several individual petitioners because of the claimed uncertainty about whether the opt-out notice applied to "solicited" faxes.⁸ The waivers granted in the *Fax Order* apply only to the individual petitioners listed in that order.⁹ The Commission noted, however, that other, similarly situated parties may also seek waivers. We therefore seek comment on the Petitioners' requests for waiver consistent with the guidance set forth in the *Fax Order*.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

⁶ *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Junk Fax Prevention Act of 2005; Application for Review filed by Anda, Inc.; Petition for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission's Opt-Out Requirement for Faxes Sent with the Recipient's Prior Express Permission*, CG Docket No. 02-278, 05-338, Order, FCC 14-164 (rel. Oct. 30, 2014) (*Fax Order*).

⁷ *See* Allscripts Petition at 9-10; FP Petition at 4.

⁸ *See Fax Order* at paras. 22-31.

⁹ *Id.* at para. 22.

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

FOR FURTHER INFORMATION CONTACT: Richard D. Smith, Consumer and Governmental Affairs Bureau, Federal Communications Commission, (717) 338-2797; or Richard.Smith@fcc.gov.

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¹⁰ 47 C.F.R. §§ 1.1200 *et seq.*